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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,815	04/09/2004	Murielle Vigny	88265-7404	8901
29157	7590	02/27/2006	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,815

Applicant(s)

VIGNY ET AL.

Examiner

Patrick F. Brinson

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 now recites that the wall of the container is made of a single piece, however, the specification does not support this claim. The specification states, page 9, lines 17-20 that the body and neck are formed as a single piece, and not the walls.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 3,878,977 to Carlisle.

The patent to **Carlisle** discloses a container comprising a body having in greater section a dimension, at least one neck (16) that has an internal diameter and a wall forming the body (14) of the container being made of a flexible plastic, such as polyethylene terephthalate (PET), which can deform for constant surface area, particularly under the weight of the flowable product contained in the container when the wall contacts a point or bearing surface, so as to form, at least one non-planar wall portion (40). The body and neck of the container are made as a single piece. The ratio of the body to the neck is between 1:3 and 1:10. The body has an ovoid overall shape. Col. 6, lines 40-50 discloses that the elements (42) of the seam (32) extends upwardly and outwardly from the opposite ends of the element (40) and curve convexly to blend into the outer seam elements. This configuration of the seam enhances the level of stability of the filled container seated in an upright position, as shown in fig. 6. **Carlisle** does not specifically disclose the flowable product as being carbonated water or a carbonated beverage, however, the fluid utilized within the container would be determined by the intended use of the container, and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. As to the recited structure of claim 7, **Carlisle** discloses that the body may be formed of PET, which is disclosed in Applicant's specification as having the properties recited in claim 7. **Carlisle** does

not disclose the body as being circular, the walls being formed as a single piece, the thickness of the walls nor the amount of plastic used to produce the container. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the body of a spherical overall shape because Applicant has not disclosed that an overall spherical shape provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with circular, ovoid shape as disclosed by **Carlisle**. Therefore, it would have been an obvious matter of design choice to modify the container of **Carlisle** to obtain the invention as specified in claim 5. As to the recited structure in claims 9, 10 and 12, the wall thickness and amount of plastic used to produce the container is not disclosed, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the thickness and amount of plastic used to produce the container, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. As to the walls being of one piece, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the walls of once piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

3. Claims 14 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over **Carlisle** in view of U.S. Patent # 6,578,740 to **Hagihara**.

The patent to **Carlisle** does not disclose a closure fitting onto the neck. The patent to **Hagihara** discloses a self-standing container formed from the same flexible plastic material as **Carlisle** and being provided with a non-planar portion (5) at the point of contact between the body and the surface on which it rests. The container including body and neck portions, wherein the neck is fitted with a closure that includes a distribution cap that can be operated with one hand of a user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide onto the spout of **Carlisle** a closure including a distribution cap, as suggested by **Hagihara** in order to alternatively dispense fluid from the container, wherein both means are equal in functioning to contain the fluid within the container prior to dispensing.

Response to Amendment

4. Applicant argues throughout that the **Carlisle** reference fails to disclose the body as being made as a single piece. It should be noted that, as previously mentioned, the amendment to claim 1 is considered to be new matter, wherein the specification does not provide support for the walls of the container as being formed

form a single piece of material. **Carlisle** is shown to be formed from at least two pieces of plastic connected at a seam, however, as disclosed previously, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Conclusion


5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Patrick F. Brinson
Primary Examiner
Art Unit 3754

P. F. Brinson
February 21, 2006